

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

11 ANDREA NARED, )  
12                      Plaintiff ) CIVIL NO. 06-3375 SBA  
13                      vs. )  
14 MICHAEL ASTRUE, ) [Proposed] ORDER  
15 Social Security, )  
16                      Defendant. )

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17        This case is before the Court on cross-motions for summary judgment. Based on the  
18 pleadings, transcript and argument submitted, Plaintiff's motion for summary judgment is hereby  
19 GRANTED and the Defendant's cross-motion is DENIED.

20        A decision by the Commissioner of Social Security to deny an application for disability  
21 benefits "may be set aside if they are based on legal error or are not supported by substantial  
22 evidence." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). In this case, the ALJ found that  
23 Ms. Nared had "moderate limits on social functioning and moderate limits on concentration,  
24 persistence, and pace." (Administrative transcript, p. 34) He did not include these limitations in  
25 his hypothetical question to the vocational expert, instead asking the expert to assume that Ms.  
26 Nared was limited to simple routine work. This hypothetical question did not adequately present  
27 Ms. Nared's moderate limitations in concentration, persistence and pace and other work-related  
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1 abilities to the vocational expert. The Ninth Circuit Court of Appeals specifically rejected the  
2 ALJ's approach, approvingly citing the Eighth Circuit's holding in *Newton v. Chater*, 92 F.3d  
3 688, 695 (8th Cir. 1996) that the ALJ's finding that the claimant had limitations in concentration,  
4 persistence and pace "was not adequately presented when ALJ's hypothetical limited the  
5 claimant to simple jobs." *Thomas v. Barnhart*, 278 F.3d 947, 956 (9th Cir. 2001).

6 The ALJ's failure to include all Ms. Nared's acknowledged limitations in his hypothetical  
7 question to the vocational expert was legal error and the resulting testimony of that expert was  
8 not substantial evidence to support a denial of benefits. Accordingly, the decision of the  
9 Commissioner is REVERSED and the case REMANDED to the Commissioner of Social  
10 Security for a new hearing and decision consistent with this Order.

11  
12 So ORDERED.

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Saundra B. Armstrong  
17 United States District Judge

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19 Dated: 9/28/07

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